

ASSEMBLY BILL

No. 2262

Introduced by Assembly Member Ackerman

February 24, 2000

An act to amend Section 3428 of the Civil Code, relating to damages.

LEGISLATIVE COUNSEL'S DIGEST

AB 2262, as introduced, Ackerman. Damages.

Existing law, known as the Managed Health Care Insurance Accountability Act of 1999, provides that a health care service plan or managed care entity, for services rendered after January 1, 2001, has a duty of ordinary care to provide medically appropriate health care services to its subscribers and enrollees where the health care service is a benefit provided under the plan.

Existing law also makes a health care service plan or managed care entity liable for any and all harm legally caused by the failure to exercise ordinary care in the arranging for the provision of, or the denial of, health care services in specified circumstances. However, existing law provides that a health care service plan or managed care entity is not a health care provider under any provision of law.

This bill would delete the provision regarding a health care service plan or managed care entity not being a health care provider and would limit the recovery of exemplary damages in a tort action against a health care service plan or managed care entity.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3428 of the Civil Code is
2 amended to read:

3 3428. (a) For services rendered on or after January 1,
4 2001, a health care service plan or managed care entity,
5 as described in subdivision (f) of Section 1345 of the
6 Health and Safety Code, shall have a duty of ordinary care
7 to arrange for the provision of medically necessary health
8 care service to its subscribers and enrollees, where the
9 health care service is a benefit provided under the plan,
10 and shall be liable for any and all harm legally caused by
11 its failure to exercise that ordinary care when both of the
12 following apply:

13 (1) The failure to exercise ordinary care resulted in the
14 denial, delay, or modification of the health care service
15 recommended for, or furnished to, a subscriber or
16 enrollee.

17 (2) The subscriber or enrollee suffered substantial
18 harm.

19 (b) For purposes of this section: (1) substantial harm
20 means loss of life, loss or significant impairment of limb
21 or bodily function, significant disfigurement, severe and
22 chronic physical pain, or significant financial loss; (2)
23 health care services need not be recommended or
24 furnished by an in-plan provider, but may be
25 recommended or furnished by any health care provider
26 practicing within the scope of his or her practice; and (3)
27 health care services shall be recommended or furnished
28 at any time prior to the inception of the action, and the
29 recommendation need not be made prior to the
30 occurrence of substantial harm.

31 ~~(c) Health care service plans and managed care~~
32 ~~entities are not health care providers under any provision~~
33 ~~of law, including, but not limited to, Section 6146 of the~~
34 ~~Business and Professions Code, Sections 3333.1 or 3333.2~~

1 of this code, or Sections 340.5, 364, 425.13, 667.7, or 1295 of
2 the Code of Civil Procedure.

3 ~~(d)~~—A health care service plan or managed care entity
4 shall not seek indemnity, whether contractual or
5 equitable, from a provider for liability imposed under
6 subdivision (a). Any provision to the contrary in a
7 contract with providers is void and unenforceable.

8 ~~(e)~~

9 (d) This section shall not create any liability on the
10 part of an employer or an employer group purchasing
11 organization that purchases coverage or assumes risk on
12 behalf of its employees or on behalf of self-funded
13 employee benefit plans.

14 ~~(f)~~

15 (e) Any waiver by a subscriber or enrollee of the
16 provisions of this section is contrary to public policy and
17 shall be unenforceable and void.

18 ~~(g)~~

19 (f) This section does not create any new or additional
20 liability on the part of a health care service plan or
21 managed care entity for harm caused that is attributable
22 to the medical negligence of a treating physician or other
23 treating health care provider.

24 ~~(h)~~

25 (g) This section does not abrogate or limit any other
26 theory of liability otherwise available at law.

27 ~~(i)~~

28 (h) This section shall not apply in instances where
29 subscribers or enrollees receive treatment by prayer,
30 consistent with the provisions of subdivision (a) of
31 Section 1270 of the Health and Safety Code, in lieu of
32 medical treatment.

33 ~~(j)~~

34 (i) Damages recoverable for a violation of this section
35 include, but are not limited to, those set forth in Section
36 3333, *except that in any action in which exemplary*
37 *damages are recoverable pursuant to Section 3294, the*
38 *amount of those exemplary damages shall not exceed*
39 *three times the amount of compensatory damages*
40 *awarded.*

1 ~~(k)~~

2 (j) (1) A person may not maintain a cause of action
3 pursuant to this section against any entity required to
4 comply with any independent medical review system or
5 independent review system required by law unless the
6 person or his or her representative has exhausted the
7 procedures provided by the applicable independent
8 review system.

9 (2) Compliance with paragraph (1) is not required in
10 a case where either of the following applies:

11 (A) Substantial harm, as defined in subdivision (b),
12 has occurred prior to the completion of the applicable
13 review.

14 (B) Substantial harm, as defined, in subdivision (b),
15 will imminently occur prior to the completion of the
16 applicable review.

17 (3) This subdivision shall become operative only if
18 Senate Bill 189 and Assembly Bill 55 of the 1999–2000
19 Regular Session are also enacted and enforceable.

20 ~~(l)~~

21 (k) If any provision of this section or the application
22 thereof to any person or circumstance is held to be
23 unconstitutional or otherwise invalid or unenforceable,
24 the remainder of the section and the application of those
25 provisions to other persons or circumstances shall not be
26 affected thereby.

